

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

LUIS D. THOMAS)	
ANIBAL ALDANA)	
JUAN ALDANA)	
GERVIN ALDANA)	Docket Nos. 1,077,277; 1,077,284
ROLANDO ESTRADA)	1,077,285; 1,077,286
VICTOR ARMIJO)	1,077,288; 1,077,606
Claimants)	
)	
V.)	
)	
ARMANDO PIZANO)	
Respondent)	
)	
AND)	
)	
TRAVELERS PROPERTY CASUALTY)	
CO. OF AMERICA)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the July 28, 2016, Order for Interpreter Fees by Administrative Law Judge (ALJ) Steven M. Roth.

APPEARANCES

C. Albert Herdoiza, of Kansas City, Kansas, appeared for the claimant. Randall W. Schroer, of Kansas City, Missouri, appeared for respondent. A. Jesse Ybarra, of Lawrence, Kansas, appeared on behalf of himself.

RECORD AND STIPULATIONS

The Board has considered the record considered by the ALJ, consisting of three pages of interpreter fees and costs associated with the scheduled hearing on May 17, 2016, three pages of interpreter fees and costs associated with the scheduled hearing on May 24, 2016, and three pages of interpreter fees and costs associated with the scheduled hearing on June 8, 2016, along with the documents of record filed with the Division.

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ISSUES

The ALJ ordered respondent to pay interpreter fees to Jesse Ybarra, per the invoices attached to his Order.

Respondent appeals, arguing the ALJ denied it the opportunity to dispute the assessed interpreter fees, by not holding a hearing, and, as the ALJ issued an order on his own motion, this constitutes an abuse of discretion. Respondent requests the Board vacate and/or modify the ALJ's Order and find the fees assessed are not reasonable, that the Board fix a reasonable fee or that the Division be taxed the fees since no record was taken in association with any of the scheduled hearings above discussed.

Mr. Ybarra argues the ALJ's Order should be affirmed. Mr. Ybarra contends an interpreter is an integral part of the process of the Court and should be paid even when a hearing is cancelled because to not do so would be unjust and would keep interpreters from wanting to work for the Division when there is no guarantee of payment for lost time. Mr. Ybarra contends that when he accepts a job for a particular day he then has to turn down any other work offered for that day and therefore incurs a loss of potential income. Mr. Ybarra requests the Board award payment in full, to include for his travel time, mileage and tolls regardless of whether the hearings were held, based upon the fact that the hearings were docketed and thereby chargeable by the interpreter. Mr. Ybarra contends this would honor an agreement he had with Judge Brad Avery.

Claimant's counsel argues the ALJ's Order should be affirmed. Counsel contends denying payment of charges associated with interpreting services when the hearing is cancelled at the last minute and the interpreter arrived, sets a bad precedent, especially if interpreters are not paid for their time. This would leave interpreters reluctant to accept work. Claimant's counsel contends Mr. Ybarra should be compensated for the fees associated with the hearings that were cancelled 40 minutes before.

The issues on appeal are:

1. Did the ALJ have authority, under Kansas Workers Compensation Act, to issue an order *sua sponte* without a hearing or notice to the affected parties, thereby denying the parties opportunity to present evidence? Was this a denial of due process?
2. Were interpreter fees properly assessed in the absence of any hearing or the creation of a record requiring interpreter services?

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3. Are the interpreter fees in question reasonable as required by K.A.R. 51-2-6, given the duplicative nature of the assessed fees and the fact the hearings were cancelled with adequate notice to the Division, the parties and the interpreter?

4. Should a reasonable fee should be taxed to the Division if a fee is legitimately incurred and no record taken?

FINDINGS OF FACT

Preliminary Hearings were set for five docketed cases for May 17, 2016, at 9:00 a.m. in Lawrence, Kansas. Mr. Ybarra's services were acquired for these hearings. After a conference call on May 16, 2016, the hearings were continued to May 24, 2016, at 1:00 p.m. in Topeka, Kansas. Mr. Ybarra was advised of the cancellation on May 16, 2016, and his services were acquired for the rescheduled hearings.

On May 20, 2016, the preliminary hearings set for May 24, 2016, were cancelled according to respondent's brief, due to a death in the family. Respondent's counsel sent an email to the ALJ and his assistant on May 20, 2016, cancelling the May 24, 2016, hearings. Mr. Ybarra was advised of the cancellation on May 20, 2016.

The May 24, 2016, hearings were rescheduled to June 8, 2016, at 1:00 p.m., in Topeka, Kansas, with a sixth docketed case being added. Mr. Ybarra's services were acquired for these hearings. The June 8, 2016, hearings were cancelled at 11:28 a.m. on the hearing date, via email by the parties, with the agreement that claimant's counsel would notify the ALJ and his assistant of the cancellation.

Respondent contends the Division had complete control over the appointment, scheduling and notifications to the interpreter, and that with two of the scheduled preliminary hearing dockets, notice of cancellation was given 1 to 4 days before the hearings. Respondent states that the third cancellation was provided prior to the start of the hearings and well in advance of the required travel time from the interpreter's office in Lawrence. Respondent argues it is unknown why the interpreter would have incurred travel time and expense unless the Division failed to notify him of the cancellation, especially when he was advised about two of the cancellations in advance.

Mr. Ybarra admits to being adequately notified of the cancellation of the two earlier scheduled hearings, but he was already on his way to the June 8, 2016, hearings when the notification came and, because he was driving, he did not see the message on his cell phone until he reached the hearing location.

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Mr. Ybarra contends he had an arrangement with Administrative Law Judge Brad Avery that spans 5 years. He alleges the agreement was that if the case was docketed, the fee was chargeable by the interpreter, regardless of whether the case was heard. Mr. Ybarra charged \$50.00 an hour, plus travel time at \$35.00 an hour, plus mileage at \$0.587 per mile. His total fees associated with the original and rescheduled hearings, as noted in the ALJ's Order, are \$957.71. Mr. Ybarra indicated his usual fee is a minimum rate of 2 hours per hearing at \$50 an hour for each claimant.

Mr. Ybarra submitted invoices for his time for these hearings to respondent. The invoices were then submitted to the ALJ who ordered respondent to pay the costs. There was no objection from respondent when the invoices were submitted to the ALJ, and it was not until after the ALJ issued his Order that respondent voiced objection to the charges by appealing the ALJ's Order for Interpreter Fees to the Board.

The parties agree that the arrangements for interpreter services were completed by the ALJ's office, and therefore it was the responsibility of that office to notify the interpreter of any changes so no undue expense is incurred by any party.

PRINCIPLES OF LAW AND ANALYSIS

The ALJ issued the Order *sua sponte* without a hearing. There is no record to indicate whether the ALJ sought input from the parties before issuing the Order.

"The essential elements of due process of law in any judicial hearing are notice and an opportunity to be heard and defend in an orderly proceeding adapted to the nature of the case."¹

Respondent was denied an opportunity to be heard on the issue of payment of the interpreter costs and fees and the reasonableness of same. Due process dictates respondent should be afforded that opportunity.²

¹ *Collins v. Kansas Milling Co.*, 207 Kan. 617, 620, 485 P.2d 1343 (1971).

² *Scroggin v. Heartland Park Raceway, LLC*, No. 1,051,858, 2013 WL 1384385 (Kan. WCAB Mar. 18, 2013).

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CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the matter should be remanded to the ALJ with instructions that a hearing on the disputed interpreter fees be held and all parties be given the opportunity to properly argue their respective positions.

ORDER

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven M. Roth dated July 28, 2016, be vacated and the matter remanded to the ALJ for a hearing to determine what if any fees and costs may be due the interpreter, and against which entity those costs and fees may be assessed.

IT IS SO ORDERED.

Dated this _____ day of September, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Steven M. Roth, Administrative Law Judge